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PARTICIPATORY BUDGETING IN POLAND: ANALYSIS OF LEGAL REGULATIONS

ABSTRACT

The realization of citizens' (participatory)¹ budgets has become one of the fixed duties of the authorities of Polish towns and cities. Local governments are to willingly engage citizens and enable them to make decisions related, among other things, to local finances. Social consultation is an exceptionally important process allowing the administration to get acquainted with public opinion or proposals put forward by the citizens who are – directly or indirectly – affected by the issue in question. Until 2019, Polish participatory budgets were based on the provisions of the Gmina Self-Government Act of 8 March 1990; or, more precisely, based on Article 5a, which provided that when it comes to issues which are important for a gmina, social consultations with citizens may be conducted. However, social consultations are not binding. On the other

¹ Wojciech Kęłowski believes that the expression “participatory budget” is more appropriate for two reasons. First, it enables this initiative to be receptive to the participation of the residents who are not registered for permanent residence or who do not have the status of citizens (e.g. immigrants); and to city users e.g. students. Second, it does not make Polish “budgets” separate from experience in other countries. See: Kęłowski, 2013, p. 6. However, *the Act of 11 January 2018 on amending other acts to increase the participation of citizens in the process of electing, operating and controlling certain public bodies* imposes on local governments the duty to label the mechanism as a “citizens’ budget”.

hand, for participatory budgets, a different solution has been adopted. Gmina authorities declared that the decisions made by citizens will be recognized as binding (Kraszewski & Mojkowski, 2014). The amendment of the provisions of the relevant acts (already operative) urges the author of the present paper to pose a question about the necessity of legal regulations to the mechanism of a participatory budget. Do Polish budgets actually call for such provisions? And, will particular solutions included in the Act lead in the near future to a diminishment of the budget's role in shaping participation among citizens? Taking heed of the imperfections of these provisions, the present paper constitutes an attempt to discover the problems posed by the Act that local governments are facing.

The main research method is an analysis of sources; and in particular, an analysis of the provisions of the Act of 11 January 2018 on amending certain others to increase the participation of citizens in the process of electing, operating and controlling certain public bodies (*Dziennik Ustaw*, 2018, item 130).

Key words

citizens' budget, participatory budget, participation, co-deciding, social consultations, democracy, civic society, non-governmental organizations

Introduction

The realization of citizens' (participatory) budgets has become one of the fixed duties of the authorities of Polish cities. These local governments are highly diversified – not only with respect to their number of residents or the area they occupy but also their levels of wealth and social contexts (Kębłowski, 2014). The departments of a local government willingly engage citizens and enable them to make decisions related, among other things, to local finances. Citizens who often get together to constitute larger social groups, thus forming, say, non-governmental organizations (foundations, associations) or other informal groups, want to exert tangible influence on the decision-making process pertinent to their immediate environment. This sort of phenomenon is referred to as *participation*.

Sherry R. Arnstein (1969), the author of a so-called *ladder of participation* defines participation as “a categorical term for citizen power. It is the redistribution of power that enables the have-not citizens, presently excluded from the political and economic processes, to be deliberately included in the future. It is the strategy

by which the have-nots join in determining how information is shared, goals and policies are set (...). In short, it is the means by which they can induce significant social reform which enables them to share in the benefits of the affluent society". The researchers who deal with participation, while trying to specify or further sharpen their grasp of the phenomenon, qualify this concept with various attributive adjectives (Zybała, 2012). And so, we can encounter *citizen participation*, *public participation*, *social participation*, *individual participation* and *collective participation*. Public participation, also labeled "vertical", describes citizens' involvement in all sorts of structures or democratic institutions, among others, those of public authorities or organizations in the public sector. An example is participation in local or national elections through voting, being a councilor, having a post in the government or in some non-governmental organization (Bordie, Cowlin & Nissen, 2009). On the other hand, social participation, labeled "horizontal", is exemplified when the members of a given society organize themselves in order to solve a given problem; for instance, when citizens form environmental patrols to monitor garbage dumps or when they form citizen patrols aimed at enhancing security in a given neighborhood (Bordie, Cowlin & Nissen, 2009). What is meant by individual participation are normally all the choices and actions within one's daily life. They are a manifestation of the peculiarities of society in which an individual wants to operate. The peculiarities in question involve an individual choosing from a list of the principles of conduct governing one's life. For example, there might be situations in which a person decides whether to spend money on charity, or to sign a petition, or whether or not to support a given organization (Bordie, Cowlin & Nissen, 2009). As follows, depending on the situation or a problem a given society might face, those who engage in public life are representatives of non-governmental organizations, of public institutions, of enterprises and also individuals, that is residents acting solely on their own behalf.

One participation technique is a social consultation, a process of a dialogue between representatives of authorities (at each level – ranging from local to central authorities) and residents, with the dialogue aiming to collect the votes of residents and the authorities taking optimal decisions related to public issues based on those votes. With respect to consultations, representatives of authorities may present to residents plans related to, for instance, investments, laws (amending them or legislating new ones) or other enterprises which may affect a citizen's life and work. Furthermore, consultations imply paying attention to citizens' opinions on projects as well as informing them about the ultimate

decisions to be made (NGO.pl, n.d.). Correctly conducted social consultation should conform to seven requirements² (Maszkowska & Wenclik, 2014):

- 1) good faith – this means that consultations are conducted in the spirit of a citizens’ dialogue. The parties listen attentively to one another, thus manifesting their respective will to give sufficient weight to the other party’s counterarguments.
- 2) universality – each person interested in a given issue should be enabled to learn about the consultations and to express an opinion.
- 3) transparency – information about the purpose, rules, process and results of consultations must be universally available. It must be clear who represents which opinion.
- 4) responsiveness – anybody who submits an opinion is entitled to receive an answer within reasonable time, which does not exclude collective answers.
- 5) coordination – consultations should have a host who is responsible politically and organizationally. The consultations should be firmly grounded in the structure of the administration.
- 6) predictability – consultations should be conducted from the very beginning of a legislative process. They should be conducted in a pre-scheduled manner based upon clear principles.
- 7) respecting general interest – despite the fact that individual participants in consultations are entitled to present their respective particular interest, ultimate decisions made as a result of consultations should represent the public interest and public good.

Participation brings benefits both to residents and to representatives of local government departments. The employees of institutions, bureaucrats or politicians are given the opportunity to work out together with citizens towards proposals which will be most favorable to all of them. Social consultations, making use of the potential for involvement and the willingness to participate, constitute a very important process allowing the administration to obtain the opinions or proposals of residents who are – directly or indirectly – affected by the problem.

² The Seven Principles of Consultation form an integral part of the Code of Consultation, elaborated by social experts and representatives of the administration during the Congress of Liberty event on the internet which describes – in plain language – the principles of consultation and gives practical guidelines in applying them. To learn more on this, see: <https://www.gov.pl/web/cyfryzacja/jak-prowadzimy-konsultacje>

However, there are many other techniques which allow for the inclusion of residents in social life. Apart from social consultations or participatory budgets, residents may participate in elections, resort to a local referendum, a citizens' legislative initiative or administrative proceedings. Furthermore, they may resort to such actions as demonstrations and happenings (Potorski & Urbański, 2014). According to the author, the form which allows residents to be optimally engaged is precisely a citizens' (participatory) budget, which allows for taking action at the preparation stage. Still, it should be borne in mind that until 2019, Polish participatory budgets were based on the provisions of the Gmina Self-Government Act of 8 March 1990; or, more precisely, based on Article 5a, which provides that when it comes to issues which are important for a *gmina* [commune], social consultations with residents may be conducted. That is why local government units have made ample use of their current participatory experience in order to make the whole process reach its goal efficiently.

1. Citizens' (participatory budgets): history and the assumptions of the process

The first appearance of a participatory budget in Poland can be traced back to 2010 in Sopot due to *Sopocka Inicjatywa Rozwojowa* [Sopot Development Initiative]³. Almost two years later, citizens' budgets were operative in Płock, Elbląg, Bydgoszcz, Poznań, Radom, Tarnów and Zielona Góra. Their popularity has grown with each successive year and a growing number of cities and towns have decided on this approach with varying success. As already mentioned, local governments introduced citizens' budgets in accordance with the provisions on Article 5a of the Act of 8 March 1990; which provided that when it comes to issues which are important for a *gmina*, social consultations with residents may be conducted. Apart from this provision, towns and cities have made use of their participatory experience with their residents. The relevant procedure in

³ *Sopocka Inicjatywa Rozwojowa* [Sopot Development Initiative] is a group of a dozen Sopot residents whose activity is aimed at providing them with the opportunity to co-decide on the issues which are of some importance to the town and to realize all sorts of ecological projects; which means, generally speaking, to act for the sake of sustainable development. *Sopocka Inicjatywa* was founded in November 2008 and its founders are Marcin Gerwin and Maja Grabkowska. To learn more on this, see: <http://www.sopocka-inicjatywa.org/>

local government departments looked very similar. Residents submitted their ideas to be financed by a part of the budget. Then, voting took place; and in the following budget year, the projects which received the greatest number of votes were implemented (Szaranowicz-Kusz, 2016). Interestingly enough, one of the towns which abandoned voting was Dąbrowa Górnicza, which after multiple assessments of the process, decided on a selection of projects via a dialogue and meetings with residents (Sobierajski, 2017). The growing interest in the process of citizens' budgets has allowed practitioners from non-governmental organizations, local government authorities and bureaucrats to establish the key principles of participatory budgets.

First, participatory budgets were to be binding. This means that the results of the selection of submitted projects eventually chosen by citizens must be binding on the bodies of a *gmina* (Serzysko, 2015). Second, such a budget is not a one-off process but rather a long-term one and as such it should be organized each year (Kębłowski, 2013). Third, a decision made by residents should relate to clearly specified and defined funds. The point is that residents should be aware of the precise amount of money about which they are going to directly decide. Furthermore, citizens should be confident that the amount will not change (Szaranowicz-Kusz, 2016). Fourth, a participatory budget should ensure some room for debate with the involvement of residents. The participatory budget ought not to be reduced to a mere plebiscite or to a choice between competing projects (Serzysko, 2015). Fifth, it should be conducted in accordance with transparent and explicitly stated procedures. Sixth, the universality of the participation of residents in this process should be visible to bolster their activity.

So, the classical process of a participatory budget includes the following stages: elaborating procedures and regulations, submitting projects, verifying the projects submitted, choosing projects through voting, and including the project in the budget for forthcoming years (Szaranowicz-Kusz, 2016). In the majority of cases, procedures regulations for a budget were announced by *gminas* (e.g. Płock, Toruń, Warszawa). At the next stage, which is the submitting of projects, there were insignificant differences across the towns and cities. In some *gminas*, residents could submit their ideas on the internet whereas in others, residents submitted their projects on paper (very much alike at the stage of voting). Certainly, the projects submitted by residents were expected to refer to a *gmina's* duties. Therefore, the funds allocated to projects could relate to the tasks which embrace the following issues:

- 1) Structural planning, real estate economy, environment protection and water economy;
- 2) Gmina roads, bridges, “squares” and traffic organization;
- 3) Water pipes and water supply, sewage, removing and cleaning municipal waste, keeping tidiness and order as well as maintaining sanitary devices and systems, garbage dumps, neutralizing municipal waste, supplying citizens with heat and power, and with gas;
- 4) Telecommunication-related activities;
- 5) Local public transport;
- 6) Health care;
- 7) Social aid, including social aid centers;
- 8) Supporting families and surrogate care;
- 9) Gmina civil engineering;
- 10) State education;
- 11) Culture, including gmina libraries and other cultural institutions as well as the preservation of historical buildings and monuments;
- 12) Physical culture and tourism, including recreational areas and sports facilities;
- 13) Market places and market halls;
- 14) Gmina open spaces and tree planting;
- 15) Gmina cemeteries;
- 16) Public order and the safety of citizens as well as fire-fighting and flood control, including equipping and maintaining gmina anti-flood measures;
- 17) The maintenance of gmina facilities and public utility equipment as well as administrative facilities;
- 18) Pro-family policy, including providing pregnant women with social, medical and legal aid;
- 19) Supporting and publicizing local government ideas, including setting the conditions for actions and the development of subsidiary units as well as for the implementation of programmes aimed at encouraging citizen engagement;
- 20) Promoting a gmina;
- 21) Cooperating and acting for the sake of non-governmental organizations and the entities under Article 3, paragraph 3 of the Act of 24 April 2003 on Public Benefit and Volunteer Work (*Dziennik Ustaw*, 2018, para. 450, 650, 723; *Dziennik Ustaw*, 2019, para. 37);
- 22) Cooperating with local and regional communities from other countries.

Satisfying the collective needs of a given community with the use of a participatory budget helped local government to precisely allocate funds. For some years, there had been an ongoing debate in Poland on how to legally regulate participatory budgets. Various groups questioned whether it was necessary to set a statutory framework; and if so, to what extent? On the other hand, the lack of regulation enabled gminas to exercise full discretion with respect to establishing the requirements that any participatory budget should meet. That is why it was local government that specified the legal status of participatory budgets, i.e. the amount of money allocated to projects; the voting procedures (letters, voting via the internet), the age of voters and of citizens submitting projects (e.g. at least 16); and the verification of the actual votes by the president – meaning they were not subject to the supervision of a *voivode* [*województwo*].

2. Citizens' budgets based on new principles

With the new principles connected with the organization of citizens' budgets being set up, problems of a formal nature appeared. The relevant act clearly specified the name of the process, by labeling it a *citizens' budget*, and not a *participatory budget*⁴, thus forcing a shift in terminology. However, the most striking change fell on towns with county rights [*miasta na prawach powiatu*] which are obligated to introduce citizens' budgets⁵. Pursuant to the Act of 11 January 2018 on amending other acts to increase the involvement of citizens in the process of selecting, operating and controlling certain public bodies, the bodies constituting local government departments were granted legal powers to pass a new sort of resolution pertinent to the requirements for a project for a citizens' budget (Misiejko, 2018). Art. 5a, paragraph 7 of the Gmina Self-Government Act provides that “the gmina council determines by way of a resolution the requirement that should be met by a project for a citizens' budget, in particular:

⁴ In line with Article 5a, paragraph 1 of the Gmina Self-Government Act, “in the cases to which the Act is applicable as well as in other issues being important to a gmina, consultations with its residents may be conducted in its area”. In its turn, the Article 5a, paragraph 3 provides that “a citizens' budget is a special form of social consultation”.

⁵ Article 5a, paragraph 5 of the Gmina Self-Government Act has it that “In gminas which are towns with county rights, the establishment of a citizens' budget is obligatory, with the proviso that the amount of the budget equals at least 0.5% of the gmina's expenditure included in the last submitted report documenting the performance of the budget”.

- 1) Formal requirements that the projects submitted should meet;
- 2) A required number of signatures from residents supporting a given project with the proviso that this number cannot exceed 0.1% of the residents of the area to which a citizens' budget is allocated and in which a given project is submitted;
- 3) The principles for evaluating submitted projects with respect to their legal compliance, their being technically performable, their meeting formal requirements as well as the procedure of appealing against a decision not to subject the project to a vote;
- 4) The principles for voting, determining results and promulgating them, while taking into consideration the fact that these principles are to ensure equality and directness”.

These rather imprecise provisions, especially with regard to “formal requirements”, made it the case that in many Polish towns and cities, the process of a participatory budget became significantly delayed. This in turn stemmed from gminas' mistakes in their respective resolutions on budgets, with the mistakes having been noticed by both the legal supervision of voivodes and Regional Accounting Chambers. Only some of the resolutions were to be corrected; however, others were overridden (Klyta, 2019). This took place in for instance, Warszawa, Radom, Świętochłowice, Gliwice, Malbork, Krosno, Legionowo and Bochnia⁶. What counts as principles were criticized by participants, which complicated the process of a participatory budget and also the necessity to collect signatures of support for a project. Until 2019, in the gminas in which participatory budgets were operative, such signatures were not needed at all. However, this was not the only problem which, together with the new legislator-imposed provisions, emerged during the realization of budgets. Another is connected with the participation of residents in the process itself. So far, local governments themselves determined the age of participants in participatory budgets as well as the manner of verification. In some cases, gminas required that the participants in the process should be registered in a given area which significantly facilitated the process of verification. The relevant Act did not explicitly state a minimum age for residents to submit projects and take part in voting. Article 5a, paragraph 4 of the Gmina Self-Government Act provides that

⁶ For more on this, see Klyta, 2019.

“within a citizens’ budget, residents – via direct voting – annually decide on how to allocate some part of a gmina’s budget. The tasks selected within a citizens’ budget are taken into consideration in a gmina’s budget resolution. The gmina council in the course of its working on the draft of a budget resolution may not remove or significantly change the tasks selected within a citizens’ budget”. As already mentioned, the provisions of the Gmina Self-Government Act do not define the concept of a *resident*. With a reference to the Civil Code in mind and pursuant to Article 25: “the place of residence of a natural person is this town/city in which this person stays with the intent of permanent residence”. Maksymilian Pazdan (2013) emphasizes that in the light of this, two factors determines a person’s place of residence: an internal one – the intent of permanent residence, which is *animus manendi*; and an external one – merely factual residence, which is *corpus*. That is why, who counts as a gmina resident are natural persons who meets these two criteria. Who also counts as a resident are natural persons lacking legal capacity, without Polish citizenship or deprived of civil rights. This in turn implies that a person may qualify as a resident entitled to participate in a citizens’ budget even if he or she is underage (below 18) or legally “incapacitated”, or a foreigner, or was deprived of civil rights by a legally-binding verdict of a court (Dolnicki, 2018).

That is why, in this year’s voting, votes were cast by their respective legal guardians on behalf of those newly born and children. After the introduction of these provisions, new problems emerged because in the majority of gminas, the winning projects were those submitted by schools or kindergartens, the pupils of which were able to cast a vote within a citizens’ budget. The next problem for local governments and stemming from the new provisions was the manner of verifying whether a person casting a vote in a citizens’ budget is really a resident of a given gmina. However, in Article 5a, paragraph 4 of the Gmina Self-Government Act there are more unknowns and also provisions that have been inapplicable thus far or have been operative in a different fashion. The legislator requires that residents should decide on the allocation of funds via directing voting, thus imposing the selection of projects. So far, however, in the majority of Polish towns and cities, projects have been selected via voting. However, one which abandoned this and decided instead on the selection of projects through a dialogue and meetings with residents was Dąbrowa Górnicza. And so, since 2019, Dąbrowa Górnicza has been forced to introduce a citizens’ budget in which municipal projects are to be selected via voting, with using its own mechanism of a participatory budget developed over several years, in which citizens annually

decide on projects within their neighborhoods⁷. An obligatory appeal procedure is also a novelty. The legislator has imposed on local government departments the duty to include in their respective formal legal procedures, one for appealing against a decision not to vote on a given project. From now on, residents may question the formal assessments of submitted projects. The next problem is the necessity to complete the projects selected via voting (Dobranowska-Wittels, 2019). In line with the provisions of the act, the council of a gmina may not remove or significantly change the projects selected. The legislator does not allow for gminas – at the stage of formal verification – being unable to anticipate the problems that may arise on the winning investment projects. Thus, the legislator's imposition of this imprecise catalogue of requirements unfortunately "shattered" the solutions – elaborated over successive years – which worked well locally (Krzysztofowicz, 2019).

Conclusion

To summarize, after analyzing the provisions of the Gmina Self-Government Act, it can be seen that new provisions deprived local governments of discretion over the principles for conducting citizens' (participatory) budgets. In the meantime, the legislator imposed on local government not only a duty for this process but also a duty of direct voting (Serwis Samorządowy PAP, 2019). The legislator only pointed to the principles that local governments should be guided by while realizing the idea of a citizens' budget, at the same time paying no attention to hitherto tried and trusted practices operative in particular gminas (Serwis Samorządowy PAP, 2019). A mistake that is worth paying attention to is the fact that in the process of consulting (a citizens' budget) every resident of a gmina may participate regardless of age or whether or not s/he has citizenship or is registered for permanent residence. The idea that ought to underlie a participatory budget is to grant residents the right to co-decide the needs and the direction of development of the local area (Błaszko, 2018). However, they should be aware of their decisions. What is more, in the case of minors – including the children who were allowed to participate in the process – there is a fear that the decision made on their behalf will actually be taken by their respective legal guardians. The fact

⁷ For more on the issue of citizens' budgets and participatory budgets in Dąbrowa Górnicza, see: <https://www.dabrowa-gornicza.pl/aktualnosci/dwa-budzety-dla-dabrowian/>

that the legislator did not take into consideration the amassed experience of participatory budgets proved harmful to local government. In consequence, the legislator, by actually enacting these provisions, did not solve the problems that towns and cities were facing, but rather aggravated them. Non-governmental and local-government circles, which are involved in participatory actions, often cast doubts on the new provisions of the act. In March 2019, *Związek Miast Polskich* [Association of Polish Cities] expressed its attitude towards this issue and wrote a letter to the President, Andrzej Duda⁸, with a request that he should support the suggestion for amendments in the provisions pertaining to citizens' budgets. A similar situation took place during the fifth *Forum Praktyków Partycypacji* [5th Practitioners' Forum for Participants], where the participants again wrote a letter to the President and to the *Przewodniczący Komitetu Pożytku Publicznego* [Chairman of the Committee of Public Benefit]; an appeal, coupled with specific suggestions for relevant amendments⁹. However, despite many voices of opposition, the legislator did not decide to amend the provisions, thus leaving local governments burdened with these imperfect solutions related to the realization of citizens' budgets.

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⁸ For more on this issue, see: <https://partycypacjaobywatelska.pl/stanowisko-zwiazku-miast-polskich-ws-budzetow-partycypacyjnych/>

⁹ <https://partycypacjaobywatelska.pl/forum-2018/apel-w-sprawie-budzetow-partycypacyjnychobywatelskich/>

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